

Application No.: 10/759,406

Docket No.: 27048-034-003

REMARKS

In the Non-Final Office Action mailed October 31, 2006, the Examiner considered Claims 1 through 30 which currently stand rejected. Claims 1, 6, 11, 16, 21 and 26 are amended. No new matter has been added. Claims 5, 10, 15, 20, 25 and 30 are canceled. Claims 1-4, 6-9, 11-14, 16-19, 21-24 and 26-29 are pending. Amendment and cancellation of certain claims is not to be construed as dedication to the public of any of the subject matter previously presented. For the reasons set forth below, Applicants respectfully request that the Examiner allow all the pending claims.

Rejections Under 35 U.S.C. 102(b)

Claims 1, 6, 11, 16, 21 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by *Goldberg* (U.S. Patent No. 5,742,509). Applicants have amended independent claims 1, 6, 11, 16, 21 and 26 to incorporate the limitations of original dependent claims 5, 10, 15, 20, 25 and 30, now canceled.

More specifically, in amended claims 1, 6, and 11, Applicants recite receiving "a data log message from the fleet and management system over the wireless network, the data log message specifying scheduling information for collection of the data." Applicant respectfully submits *Goldberg* fails to teach or suggest receiving "a data log message from the fleet and management system over the wireless network, the data log message specifying scheduling information for collection of the data."

In amended claims 16, 21 and 26, Applicants recite "transmitting a data log message to the telemetry device, the data log message specifying scheduling information for collection of the data," or means for doing same. Applicant respectfully submits *Goldberg* fails to teach or suggest "transmitting a data log message to the telemetry device, the data log message specifying scheduling information for collection of the data."

As anticipation under 35 U.S.C. 102 requires that each and every element of the claim be disclosed in a prior art reference, based on the foregoing, it is clear that *Goldberg* fails to anticipate independent claims 1, 6, 11, 16, 21 and 26. Accordingly these independent claims, along with

Application No.: 10/759,406

Docket No.: 27048-034-003

claims 2-4, 7-9, 12-14, 17-19, 22-24 and 27-29 which depend correspondingly therefrom, are in condition for allowance.

Rejections Under 35 U.S.C. 103(a)

The Examiner has made a objection that "Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a)." There is no such obligation under 35 CFR 1.56 that Applicants are aware of, and Applicants solicit the Examiner to clarify the request for information.

With regard to the claims, claims 1, 4-6, 9-11, 14-16, 19-21, 24-26, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Lowrey* (U.S. Patent No. 6,611,740 B2), and further in view of *Goldberg*. The secondary reference to *Lowrey* does not cure the deficiencies of *Goldberg*. With respect to additional limitations of amended independent claims 1, 6, and 11, *Lowrey* is relied upon for teaching "a message with a schema specifying the type and frequency of data collection," citing *Lowrey* at col. 2, ll. 18-22 and col. 5, ll. 10-17 (Office Action, page 6, "Regarding claims 5, 10 and 15"). The cited passages disclose the following:

"The wireless appliance includes a data-transmission component configured to transmit data associated with the operational characteristics over a network to a host computer system, and to receive over the network data from the host computer system." (col. 2, ll. 18-22)

"Moreover, software schemas that update the type or frequency of the vehicle's data can be directly downloaded to specific wireless appliances or groups of wireless appliances (corresponding, e.g., to a fleet of vehicles or a group of vehicles having the same year, make, or model). This makes it possible to collect data that specifically elucidates a problem with the vehicle that may occur only under certain driving conditions." (col. 5, ll. 10-17)

The above passages disclose, in only general terms, that data transmission occurs over a network from and to the host computer system based on a schema that updates "the type or frequency of the vehicle's data" that can be transmitted, but not on a specific schedule. This falls shorts of the claimed limitation, specifically "a data log message from the fleet and management

Application No.: 10/759,406

Docket No.: 27048-034-003

system over the wireless network, **the data log message specifying scheduling information for collection of the data.**" (emphasis added)

With respect to additional limitations of amended independent claims 16, 21 and 26, *Lowrey* is relied upon for teaching "transmitting a message to the wireless appliance with a schema specifying the type and frequency of data," citing *Lowrey* at col. 7, ll. 21-40 (Office Action, page 8, "Regarding claims 20, 25 and 30"). The cited passage discloses the following:

"In this case the technician uses the web site to select a new schema (step 32) and then sends an incoming data packet that includes a new schema over the wireless network to the wireless appliance included in the vehicle being diagnosed (step 34). In typical applications, the vehicle is specifically addressed using a serial number that corresponds to the data-transmitting component. This serial number is typically an 8 or 10-digit number that functions effectively as a 'phone number' corresponding to the data-transmitting component. This number is included in the data packet, and is used by the wireless network to transfer the packet to the host vehicle (step 35). The host vehicle receives the packet and processes it to extract the new data-collection schema (step 36). The wireless appliance uses the updated schema to extract a revised set of data from the vehicle's engine computer, or send out data at a revised frequency (step 38). In other applications, the new schema can be used to query a set of data that is relevant to a DTC registered by the vehicle, or to 'clear' a DTC when it is deemed to no longer be problematic." (col. 7, ll. 21-40)

Again, the above passage only discloses the data transmission of a schema, which as previously discussed, specifies only the type and frequency of data, but fails to teach or suggest "transmitting a data log message to the telemetry device, **the data log message specifying scheduling information for collection of the data.**" (emphasis added)

Based on at least the reasons noted above, Applicants respectfully submit that claims 1, 4, 6, 9, 11, 14, 16, 19, 21, 24, 26, and 29 are in condition for allowance.

Claims 2, 3, 7, 8, 12, 13, 17, 18, 22, 23, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Lowrey* and *Goldberg* as applied to Claims 1, 6, 11, 16, 21, 26 and further in view of *King* (U.S Patent Application Publication No. 2003/0011511 A1). The additional reference of *King* does not cure the deficiencies of *Lowrey* and *Goldberg*. *King* is relied upon for allegedly teaching "of mobile device originating a location request from the reference network server, receiving the location assistance data and calculating its own location." Therefore, a *prima*

Application No.: 10/759,406

Docket No.: 27048-034-003

facie case of obviousness has not been established. Based on at least the reasons noted above, Applicants respectfully submit that claims 2, 3, 7, 8, 12, 13, 17, 18, 22, 23, 27 and 28 are allowable.

CONCLUSION

On the basis of the above amendments and remarks, reconsideration and allowance of all the pending claims is believed to be warranted and such action is respectfully requested. If the Examiner has any questions or comments, the Examiner is respectfully requested to contact the undersigned at the number listed below. The Office is hereby authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1847.

Dated: May 10, 2007

Respectfully submitted,

By 

Pamela S. Minkadeau

Registration No.: 53,318

Manatt, Phelps & Phillips, LLP

1001 Page Mill Road, Building 2

Palo Alto, California 94304-1018

Telephone: (650) 812-1375

Facsimile (650) 213-0260

20180949.1